

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON MACHINERY AND AMENDING DIRECTIVE 95/16/EC**

UNICE POSITION PAPER

27 June 2001

GENERAL COMMENTS

1. The directives based on article 95 of the Amsterdam Treaty (ex article 100A) represent an important tool for health protection and safety at work insofar as they provide measures concerning construction, machines, tools, equipment, etc. Their objective must not be to impose any existing national provisions at European level, but to try to harmonise these requirements in order to complete the internal market (free movement of goods) while maintaining high levels of health protection and safety for users.
2. The Molitor report recommends simplification of existing directives in this area and sets its sights more particularly on those relating to placing machines on the market. This is how the European Commission justifies its intention to revise the present directive.
3. UNICE shares the view that the rules governing machinery have become highly complex for employers/users. Not only do they need to verify conformity with directive 98/37/EC but, since 5 December 1998, they must also apply directive 95/63/EC amending directive 89/655/EEC on work equipment, whose article 4a and the new annex I represent fundamental changes which have not, however, yet been transposed in a majority of Member States. More particularly, UNICE points out that the division of responsibilities between manufacturer and user is currently difficult for companies and supervisory bodies to understand.
4. UNICE also notes that the current machines directive is difficult for small and medium-sized enterprises to understand and to apply, whether they be manufacturers, fitters or users. Even large firms have difficulty in assimilating the directive. Moreover, in practice, the existing directive also generates a certain degree of confusion among supervisory authorities.
5. UNICE therefore welcomes the intention of simplifying the existing directive.
6. However, UNICE believes that the draft directive makes little headway towards facilitating comprehension even if it represents an improvement on the preparatory versions. In UNICE's view, the proposal for a directive currently under discussion creates new source of confusion and bureaucracy¹.

¹ Examples: the concept of machinery, deletion of article 8.7, the new concepts of placing on the market and putting into service or the additions to annex II parts A and B.

7. UNICE calls on the EU institutions to ensure that this amendment does not create further complications in either the rules or the implementing procedures.
8. In the eyes of employers, simplification should be sought on the basis of the experience gained since adoption of directive 89/392/EEC of 14 June 1989 and its amendments. In addition, the spirit of the Molitor report should be preserved throughout the process of drafting the future directive.
9. At the same time, it should be pointed out that the experience gained with application of directive 89/392/EEC and the successive amendments is insufficient to allow an extensive and accurate assessment of its application. A fair number of provisions have only been generally applied since 1995 or even more recently. Furthermore, the Commission has not yet drawn up a report on application of these directives in the Member States, which could highlight all the difficulties encountered and identify provisions that might need modification.
10. In that context, UNICE is against *fundamental* amendments to directive 98/37/EC, judging the measures that this would entail to be premature and complex. It calls on the EU institutions to avoid introduction of new and significant constraints on companies, and on SMEs in particular, and thereby to adhere to article 137(2) of the Treaty.
11. A good number of EN standards, which are the indispensable pendant of directive 98/37/EC, are still being drafted. These standards, and those which already exist, follow the structure of directive 98/37/EC (annex I and scope) and any fundamental modification of this apparatus would require review of all standards, existing or in preparation, involving very heavy costs. The same comment applies for the manufacturer's technical information and instructions.
12. UNICE would also like to raise the point that market supervision is not carried out satisfactorily at the present time, placing EU and non-EU producers in an uneven situation. It is important to avoid creation of such distortions of competition.
13. UNICE insists that all individuals and bodies corporate placing machines on the market in the territory of the European Union must be obliged to comply with the directive, whatever their professional activity. The new wording may give the impression that only firms designing and manufacturing machines are responsible. It is essential that all commercial intermediaries remain subject to the directive, as is the case today.

SPECIFIC COMMENTS

Scope

1. The interplay between the machines directive and the low-voltage directive has always been one of the delicate points of the directive which has given rise to many controversies, notably among standardisation officials. Employers propose that the term "motors and generators" is added to article 1.2 letter j (vi).
2. Employers suggest that motors should not be excluded from the directive in order to avoid the risk of a revival of national trade barriers. In this context, UNICE proposes deletion of the term "motors of all types" from article 1.2 letter k (l).

Definition of partly completed machinery

3. One of the main elements of the Commission's new draft is introduction of an obligatory regime for partly completed machinery. By definition, these are not ready for direct use. In the existing directive, these subassemblies do not have to comply with any essential safety requirement of annex I to the directive provided that they are accompanied by a manufacturer's declaration of incorporation (known as a IIB declaration).
4. Employers propose a simplified definition of partly completed machinery through deletion of the mention that a partly completed machinery is "almost a machine" and that it has no "defined application". The only important point is that the quasi-machine is designed for incorporation in a unit or assembly with another machine. It is at that stage that conformity of the unit with the directive must be ensured.
5. The obligation to provide a customer with an assembly notice for partly completed machinery is acceptable. Against that, employers believe it would be unacceptable to add additional constraints for subassemblies. It should be stipulated that subassemblies need not bear CE marking by virtue of the machines directive.

Definition of manufacturer

6. The new definition of manufacturer does not set out clearly that any person placing a machine on the market or commissioning a machine is regarded as a manufacturer. The old article 8.7 was very clear. Employers recommend that it be retained.

Definition of concepts of "placing on the market" and "putting into service"

7. UNICE notes that the new definitions of the concepts of "placing on the market" and "putting into service" have been included, thereby creating fresh sources of confusion. UNICE calls for harmonisation of all the basic definitions used in new-approach directives.

Machines with no intrinsic risk

8. Some products which meet the technical definition of a machine have in practice never been subject to the machines directive because application of the directive would have no useful effect (e.g. a wristwatch, some musical instruments, mechanised upholstered furniture). These products should not be encumbered by any administrative constraints.
9. In addition, UNICE considers that, in order to avoid obstacles to competition, the criteria for exclusion of machines from the scope of the directive must be rigorously and clearly formulated, ruling out the possibility of a subjective assessment on the part of manufacturers themselves.

Conformity assessment of machines covered by annex IV

10. UNICE considers that a strengthening of the CE type examination procedure for machines which conform to European standards is not a move in the direction of simplification as demanded in the Molitor report. These machines should be certified by a simple manufacturer's conformity declaration.
11. UNICE welcomes the new quality assurance procedure which will enable manufacturers of one-off machines or small series to absorb the cost of the CE type examination.

Creation of a regulatory committee

12. UNICE considers that transformation of the committee charged with monitoring the machines directive into a “regulatory” committee within the meaning of decision 1999/468/EC renders application of the machines directive more complex. Since business representatives would no longer form part of this committee, UNICE considers that the directive is likely to be monitored without the support and views of the main economic agents, i.e. users and manufacturers of machines. This is unacceptable and UNICE encourages the institutions to review this provision.

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